IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE SIXTEENTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

WRIT PETITION NO : 22841 of 2004

Between:

Namburi Subba Rao, s/o Koteswara Rao , Hindu,
Engineering Department, Bapatla Engineering College, Bapatla, Guntur District, R/o D.No. 4-9-83, 4th Line,
Patel Nagar, Bapatla, Guntur District.

..... PETITIONER

AND

1 The Bapatla Engineering College, Bapatla, Guntur District, rep. by its President.
2 The Government of Andhra Pradesh, rep. by its Director of Technical Education,
B.R.K.R Buildings, Tank Bund, Hyderabad.

.....RESPONDENTS.

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ, order or direction more particularly one in the nature of Writ of mandamus or any other appropriate writ, declaring the action of the 1st respondent in not permitting the petitioner to engage a lawyer in the departmental enquiry going on pursuant to the enquiry notice dt. 26-11-2004 of the Chairman Enquiry Committee as illegal, and arbitrary and violative of Art. 21 of the Constitution of India and declaring the action of the 1st respondent in not constituting the enquiry committee with members of the College other than the teaching staff though it was done in the case of Sri N.P.N. Murthy lecturer of the same college as illegal and declaring the action of the R-1 in seeking that the request of the petitioner to cross examine the persons sought to be produced through his letter dt. 27-11-2004 is rejected as illegal and it is further consequentially prayed that this Hon'ble Court may be pleased to direct the 1st respondent to permit the petitioner to engage a lawyer to conduct the case of the petitioner in the said departmental enquiry and it is further

consequentially prayed that this Hon'ble Court may be pleased to direct the 1st respondent to constitute the enquiry committee with any other members other than the teaching staff of the college as was done in the case of Sri N.P.N. Murthy, Lecturer , Civil Engineering Department in the 1st respondent college, and it is further consequentially prayed that this Hon'ble court may be pleased to direct the 1st respondent to allow the petitioner to cross examine the key witnesses whom he sought to be produced in the enquiry in his letter dt. 27-11-2004 addressed to the Chairman of the enquiry committee in the 1st respondent college.

Counsel for the Petitioner: MR.S.R.SANKU

Counsel for the Respondent No.2: GP FOR EDUCATION

Counsel for the Respondent No.1: Mr. B. Adinarayana Rao

The Court at the stage of admission made the following :

The Hon'ble Sri Justice

K.C. Bhanu

W.P. No. 22841 of 2004

O R D E R:

For not allowing the petitioner's request to engage a lawyer to defend the case in departmental enquiry, the present writ petition is filed.

On earlier occasion when the petitioner was placed under suspension, he filed W.P. 17929 of 2004 which was allowed by this court by its order dated 26.10.2004 directing the respondents 3 to 5 to examine the grievance of the petitioner and to pass appropriate orders. The petitioner is working as a Senior Mechanic in Electronics and Communications Engineering Department. On 18.11.2004 an enquiry committee was constituted with the members who are the professors in the college. Thereafter the enquiry committee vide its proceedings dated 26.11.2004 informed the petitioner that enquiry would be held on 7.12.2004 wherein he cited the Management witnesses. He was allowed to bring a co-employee. Thereafter, he gave a requisition dated 27.11.2004 to the enquiry committee

requesting to allow him to cross-examine certain witnesses stated in his representation. The 1st respondent gave a reply dated 30.11.2004 stating that the enquiry committee is constituted without lawyers and therefore his request for engaging a lawyer on his behalf does not arise. By citing various decisions that denying the services of the lawyer in the departmental proceedings violates principles of natural justice, the present writ petition is filed.

Learned counsel for the petitioner contended that denial to engage lawyer in the departmental proceedings is nothing but violation of proper and reasonable opportunity to defend the case and therefore the impugned order suffers from serious legal infirmities. He also contended that on earlier occasion a lawyer was permitted to defend in some other enquiry contemplated against some of the employees by virtue of the proceedings of the College dated 10.10.2003. Hence, he prays to quash the proceedings and permit the petitioner to defend his case in the departmental enquiry through a lawyer.

On the other hand, learned counsel for the respondent No.1 contended that the provisions of the Evidence Act are not applicable to the facts of the present case though the general principles may have relevance and depending upon the nature of charges the assistance of the lawyer will be allowed and considering the charges levelled against the petitioner, the assistance of the lawyer is not required. He further contended that earlier the services of the lawyer were allowed because of the fact that the management wished to conduct the case through a lawyer on behalf of the management but in this case the assistance of a qualified legal practitioner was taken to conduct on behalf of the management and therefore the question of granting such permission does not arise.

The allegation is that the petitioner was transferred to Department of Chemistry from Electronics and Communications Engineering Department of 2nd respondent-college but he refused to receive the said transfer order. When the Principal issued a memo

calling for his explanation, the petitioner filed W.P. 17929 of 2004. Thereafter, he reported to duty in the Department of Chemistry on 9.10.2004. Since then he was sitting idle in the Department without taking charge from Mr. K. Ankamma Chowdary and not doing any work in the Department as assigned by the Head of the Department of Chemistry from time to time and he gave replies evasively, arrant and with scandalous language against the higher authority which creates not only physical pollution in the institution but also amounts insubordination, misconduct, misbehaviour and gross negligence of duties, and therefore he was placed under suspension and an enquiry committee is constituted to enquire into the charges levelled against the petitioner. Thereafter, the enquiry committee issued proceedings dated 26.11.2004 calling upon the petitioner to appear before the enquiry committee on 7.12.2004 without fail. It was also made clear that a co-employee who is working in the college is permitted to assist him during the course of enquiry proceedings. The witnesses to be examined on behalf of the Department were also cited. On the next day the petitioner filed an application to produce certain witnesses mentioned in his representation on that day. On the same day he filed another application seeking permission to appoint a lawyer on his behalf to defend and prove his innocence. Both the representations were rejected on the ground that his request to cross-examine other witnesses cannot be entertained because he is at liberty to cross-examine only the witnesses whomever the management produced before the enquiry committee. As it is a departmental enquiry and the enquiry committee is constituted without lawyers, the enquiry committee held that the request of the petitioner for engaging the advocate on his behalf does not arise.

Learned counsel for the petitioner relied upon a decision of the apex court in **Indian Telephone Industries Ltd. v. Devi Shanker Kumar Shukla** wherein it is held:

> "It is clear from the above provision in the standing order that the requirement is to appoint an Inquiry Officer who is not from the Security Department.

> there is no other prohibition about choice of the person to be appointed Inquiry Officer in the above provision. the reason for excluding a person belonging to the Security Department is obvious. Such a person who is in the Security Department may have some interest in the successful conclusion of the domestic inquiry against the delinquent employee. His exclusion, therefore, is to eliminate the likelihood of any bias. Such a provision cannot be construed to mean that a person who is not even an employee in any other department and being an outsider having no interest in the outcome of the domestic inquiry is also to be excluded".

While interpreting the standing orders of the Indian Telephone Industry, the apex court observed as aforesaid. Therefore, the decision relied upon by the learned counsel for the petitioner has no application to the present facts of the case.

Another decision in **Pett v. Greyhound Racing Association Ltd.** was relied upon by the learned counsel for the petitioner where it is held:

> "Once it is seen that a man has a right to appear by an agent, then I see no reason why that agent should not be a lawyer. It is not every man who has the ability to defend himself on his own. He cannot bring out the points in his own favour or the weaknesses in the other side. He may be tongue-tied or nervous, confused or wanting in intelligence".

The above decision has also no application to the present facts of the case because in this case the petitioner was permitted to be assisted by a co-employee working in the college during the course of enquiry proceedings. Therefore, it is not a case where the petitioner was not permitted to be assisted by anybody to defend his

case.

Another decision on which the learned counsel for the petitioner placed reliance is in **Board of Trustees, Port of Bombay v. D.R. Nadkarni** wherein the apex court held:

> "Negativing this contention, this court held that the fact that the case against the appellant was being handled by a trained prosecutor was by itself a good ground for allowing the appellant to engage a legal practitioner to defend him lest the scales should be weighted against him".

The apex court further held:

> "In our view we have reached a stage in our onward march to fair play in action that where in an enquiry before a domestic tribunal the delinquent officer is pitted against a legally trained mind, if he seeks permission to appear through a legal practitioner the refusal to grant this request would amount to denial of a reasonable request to defend himself and the essential principles of natural justice would be violated".

Learned counsel for the petitioner further relied upon a decision in **J.K. Aggarwal v. Haryana Seeds Development Corporation Ltd.** wherein it is held:

> "5. On a consideration of the matter, we are persuaded to the view that the refusal to sanction the service of a lawyer in the inquiry was not a proper exercise of the discretion under the rule resulting in a failure of natural justice; particularly, in view of the fact that the Presenting Officer was a person with legal attainments and experience. It was said that the appellant was no less adept having been in the position of a Senior Executive and could have defended, and did defend, himself competently; but as was observed by the learned Master of Rolls in Pett's case that in

> defending himself one may tend to become "nervous" or "tongue tied". Moreover, appellant, it is claimed, has had no legal background. The refusal of the service of a lawyer, in the facts of this case, results in denial of natural justice".

The above decisions have no application to the present facts of the case because the case of the management is not being handled by a legal practitioner or legally trained person. Admittedly in this case the committee of enquiry consists of professors and heads of departments of the 2nd respondent college.

Learned counsel for the petitioner further relied upon a decision in **M.S. Board of S.&H.S. Education v. K.S. Gandhi** wherein it is held:

> "Assistance of an Advocate to the delinquent at a domestic enquiry is not a part of the principles of natural justice. It depends on the nature of the inquiry and the peculiar circumstances and facts of a particular case. The regulations and the rules of enquiry specifically excluded the assistance of an Advocate at the inquiry. Therefore, the omission to provide the assistance of a counsel at the inquiry is not violative of the principles of natural justice".

Even the above decision makes it clear that omission to provide assistance of a counsel at the inquiry does not amount to violation of principles of natural justice and it depends upon the nature of enquiry and the facts and circumstances of each case.

The allegations in this case are dereliction of duty and misconduct for not taking charge when he was transferred from one department to another and making scandalous comments against the Head of the Department. So, in such circumstance, engagement of lawyer does not effect the case of the petitioner in the departmental

proceedings. When the choice is given to bring a co-employee of the petitioner to assist the case, it is sufficient in the enquiry to be conducted against the petitioner. In his representation the petitioner did not state the actual need or assistance to be given by the lawyer and that the nature of allegations are such that unless an advocate is permitted to defend his case in the departmental enquiry, the co-employee of the petitioner cannot proceed further. According to him, as per the representation in one case an employee was permitted to engage a lawyer, therefore, denying the same opportunity to him would cause prejudice in the departmental enquiry. It is brought to the notice of this court by the learned counsel for the respondent No.2 that because a trained legal graduate is being assisted to the management in that case, a lawyer was allowed therein. Therefore, the case of the petitioner cannot be said to be similar to the case of the employee to whom the assistance of lawyer has been provided. Therefore, the proceedings dated 10.10.2003 cannot be said to be a binding precedent on the management to provide assistance of a lawyer. No rule or provision or regulation framed by the 2nd respondent is brought to the notice of this court that in all cases of disciplinary enquiries the assistance of a lawyer should be given to the delinquent.

Therefore, the order under challenge does not suffer from any legal infirmities so as to call for interference by this court. The writ petition is devoid of merit and it is accordingly dismissed at the stage of admission.

K.C. Bhanu, J.

Date: --12—2004.

MVB.

..... REGISTRAR

// TRUE COPY //

SECTION OFFICER

To

1 The President, Bapatla Engineering College, Bapatla, Guntur District.
2 The Director of Technical Education, Government of Andhra Pradesh, B.R.K.R Buildings, Tank Bund, Hyderabad.

3. 2CCs to G.P. for Education, High court Buildings, Hyderabad (OUT).

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